

**This is a DRAFT document for submission to the High Court of Karnataka. This document is CONFIDENTIAL and is NOT for the wider circulation.**

**This DRAFT has been prepared based on the following documents.**

- 1. World Health Organisation Framework Convention on Tobacco Control (WHO FCTC)**
- 2. Guidelines for Implementation of Article 5.3 of the WHO FCTC**
- 3. Ethical Guidelines for Meeting with the Tobacco Industry by Judith Mackay & Mary Asunta**
- 4. Joint Memorandum Circular No. 2010-01, Protection of the Bureaucracy Against Tobacco Industry Interference, Civil Service Commission & Department of Health, Republic of the Philippines**
- 5. Department Memorandum No. 2010-0126, Protection of the Department of Health, including all of its agencies, regional offices, bureaus or specialised/attached offices/units, against tobacco industry interference, Office of the Secretary, Department of Health, Republic of the Philippines, 6 May 2010.**
- 6. Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003**

# **Code of Conduct for Public Officials/Employees to Prevent Tobacco Industry's Interference in Setting and Implementing Public Health Policies and Programmes**

## **1. Rationale:**

- 1.1. World Health Assembly resolution WHA54.18 on transparency in tobacco control process, citing the findings of the Committee of Experts on Tobacco Industry Documents, states that "the tobacco industry has operated for years with the express intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic".
- 1.2. World Health Organisation Framework Convention on Tobacco Control (WHO FCTC), which was signed on 10th September 2003 and fully ratified on 5th February 2004 by the government of India, in its preamble recognises that Parties "need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts", and specifically under the title General Obligations Article 5.3 mentions that "parties (here Government of India), in setting and implementing their public health policies with respect to tobacco control, shall act to protect these policies from commercial and vested interests of the tobacco industry".
- 1.3. World Health Organisation Framework Convention on Tobacco Control, Guidelines for Implementation Article 5.3, which was adopted by the Conference of Parties in November 2008 to assist Parties in implementing Article 5.3, mentions in its guiding principle 1 that "there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests", and specifically in its recommendation 4.3 mentions that "Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry".

## **2. Purpose:**

- 2.1. To protect formation and implementation of tobacco control policies and programmes from commercial and other vested interests of tobacco industry.
- 2.2. To ensure that policies and practices followed by public officials/employees are in line with meeting governments' legal obligations under the article 5.3 of the WHO FCTC.

## **3. Scope:**

This code of conduct shall apply to all the government officials, representatives and employee of any national, state, municipal, local or other public or semi/quasi/autonomous public institutions or body within the jurisdictions of union/state governments and union territories in India, and to any person acting on their behalf.

## **4. Definition of terms:**

Conflict of Interest: This term shall mean a situation created when persons or entities have personal, financial or any other interests on tobacco industry, such as having an existing ownership or investments therein, being an officer or a member of the Board of Directors or any such committees of tobacco industry (including its subsidiaries, affiliates, branches) or a partner

in a partnership engaged therein, and receiving any contributions therefrom. This includes receiving or accepting any offer or contribution from the tobacco industry, even if a promise of favourable consideration is not given in exchange.

Contributions: This term means anything given, whether monetary or in-kind, in favour of an official, employee, or an agency or institution he/she represents or is known to represent, other than those required by law. This includes, but not limited to, any act, right, liberality, payment, gift, service, gratuity, favour, entertainment, loan, funding, and technical or legal advice.

Tobacco products: This term refers to all tobacco products specified in Schedule of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, including 1) Cigarettes 2) Cigars 3) Cheroots 4) Beedis 5) Cigarette tobacco, pipe tobacco and hookah tobacco 6) chewing tobacco 7) Snuff 8) Pan masala or any chewing material having tobacco as one of its ingredients-by whatever name called- 9) Gutka and 10) Tooth powder containing tobacco.

Tobacco Industry: This term shall refer to organisations, entities, associations, and individuals that work for or in behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, distributors, importers of exporters of tobacco products, tobacco retailers, front groups and any other individuals or organisations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry.

Tobacco Industry Interference: This term means a broad array of strategies and tactics used by the tobacco industry to interfere with the setting and implementing of tobacco control measures (including public health policies and programmes).

### ***Providing information and raising awareness***

5. The head of each agency/ office/department/bureau/unit, shall conduct a sustained information and awareness activities directed to officials, employee and public about:
  - 5.1. the addictive and harmful nature of tobacco products;
  - 5.2. the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control;
  - 5.3. the tobacco industry's practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry; and
  - 5.4. the true purpose and scope of so-called corporate social responsibility activities of tobacco industry.

### ***Interactions with tobacco industry***

6. Officials and employee shall interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.
7. When interactions with the tobacco industry are necessary, such shall be conducted transparently and in public, through public hearings, through prior public motives of such interactions, and disclosure of records of interactions to public, and in such a manner that avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction.
8. When interactions with the tobacco industry are necessary, such interactions shall be

carried out in strict compliance to the following guidelines:

- 8.1.** Any proposed interaction with the tobacco industry must be made known to all officials concerned and shall be approved by the nodal officer for tobacco control in the Department of Health, in the respective state or union government;
- 8.2.** The agenda for the proposed interaction shall be set in advance and in writing. Officials and employees must adhere strictly to the agenda and clarify the goal and structure of the interaction. No departure from, or any modifications of any items in, the agenda shall be allowed, unless such departure or modifications underwent through the same publication and approval mentioned earlier on this paragraph. Such agenda shall be made public;
- 8.3.** The participants in the interaction must be predetermined, and all details including the names and designations of those who will be involved must be fully disclosed. A lawyer must be present and must closely advise the official/employee/representative during the interaction;
- 8.4.** Officials and employee shall keep the interaction as brief as possible, and at all times, before start of such interaction, publically announce and strictly maintain their right to terminate the interaction at any point;
- 8.5.** Before the interaction, it must be made clear that such interaction does not in any way imply partnership, dialogue, association, support, or any collaboration with the tobacco industry. The concerned officials and employees must explicitly indicate in writing to the tobacco industry that the tobacco industry may not mischaracterise the nature of the interaction;
- 8.6.** The interaction shall strictly be held at the premise of the department, office, or unit concerned. Any interaction outside the premise must be strictly prohibited.
- 8.7.** Any photograph taken or video/audio recording of the interaction must strictly be only for the documentation purpose and should not be used for the public relation activities of, or any communications for any other purpose by, the tobacco industry;
- 8.8.** All stakeholders in tobacco control, including non-governmental organisations, must be notified of the proposed interaction. If possible, the presence of at least one representative from tobacco control stakeholders must be ensured;
- 8.9.** All interactions with the tobacco industry must be recorded and the official minutes must be prepared by the official or employee concerned. A voice recording of the interaction may be made to assist the staff in preparing the transcript of the interaction;
- 8.10.** Transcript of interaction must be filed for record purposes and shall be distributed as appropriate and made available to the public through existing channels of communication within the departments (notice board, website etc.) and upon the request;
- 8.11.** Follow-up questions or concerns must be promptly answered, addressed, or decided on;
- 8.12.** All non-mediated, non-public exchanges or interactions (in person, phone, radio, email, internet, or any other forms of communication) between officials/employees and the representatives of the tobacco industry must be prohibited;
- 8.13.** Officials shall include the following statement in all issuance, contracts, public documents, communications, exchanges and interactions, directly or indirectly involving tobacco;
- 8.14.** "The (specific name of) Ministry/Department/Unit/Office does NOT deal with the tobacco industry or individuals or entities that work to further the interests of the tobacco industry, except to the extent strictly necessary to effectively regulate, supervise, or control the tobacco industry and tobacco products."

### ***Partnerships and contributions***

9. Officials/employee should not, directly or indirectly, accept, support or endorse:
  - 9.1. any potential or real partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry;
  - 9.2. the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control;
  - 9.3. any position paper, voluntary code of conduct or policy instrument drafted by, or in collaboration with, the tobacco industry; and
  - 9.4. any contributions from the tobacco industry, either in their own behalf, in behalf of their agency or other entity, or in behalf of their families, relatives, friends, or any other persons, regardless of value thereof.
10. In case of violation of the section-9 of this code of conduct, the official/employee concerned shall, within fifteen(15) calendar day, act to:
  - 10.1. discontinue any partnership, agreement, participation and return any contribution given by tobacco industry;
  - 10.2. warn the concerned person or entity of the particular prohibition and the obligation to document and report in accordance with this code of conduct; and
  - 10.3. take necessary measures against the tobacco industry representatives responsible for such actions.

### ***Conflict of interest***

11. Applicants seeking the public office positions (prospective/potential employee) shall:
  - 11.1. be required to declare any interest in or current or previous occupational activity within the tobacco industry, whether gainful or not; and
  - 11.2. If a conflict of interest exists, be prohibited from being appointed to any position within public service or within any committee or advisory group that involves setting up or implementation of tobacco control policies or programmes.
12. Current officials/employee shall:
  - 12.1. declare and divest themselves of direct interests in the tobacco industry within sixty (60) calendar days from the date that this code of conduct comes into effect;
  - 12.2. avoid any conflict of interest there onwards; and
  - 12.3. declare any intention to engage in any occupational activity within the tobacco industry, whether gainful or not, within sixty (60) calendar days after leaving service.
13. Former officials/employees who have joined the tobacco industry after public employment must be strictly prohibited from making any transactions, directly or indirectly, with incumbent public officials/employees, on any matter/case pending with the public agency/ office/department/bureau/unit.
14. Officials/employees must ensure that no tobacco industry representatives or any person or entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy or programmes.
15. Department should not award contracts for carrying out any work to individuals or institutions who have conflicts of interest with established tobacco control policies.

16. Officials/employees shall require, in all the contracts with consultants and contractors, prior to any engagement with the department, the execution of a declaration of interest in the tobacco industry and a stipulation providing for the cancellation or termination of the contract in the event that it is discovered that such consultant or contractors have an existing interest in tobacco industry.

***Denormalising the so-called corporate social responsibility activities of tobacco industry***

17. The corporate social responsibility of the tobacco industry is, according to World Health Organisation, an inherent contradiction, as industry's core functions are in conflict with the goals of public health policies with respect to tobacco control.
18. The tobacco industry conducts activities described as socially responsible to distance its image from the lethal nature of the product it produces and sells or to interfere with the setting and implementation of public health policies. Activities that are described as "socially responsible" by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as a public relations strategy that falls within the definition of advertising, promotion and sponsorship by FCTC.
19. The head of each agency, office, department, bureau or unit shall ensure that officials/employee and public are informed and made aware of the true purpose and scope of activities described as socially responsible performed by the tobacco industry.
20. Officials/employee should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.
21. When officials/employees are approached about, or become aware of, such so-called socially responsible, or corporate social responsibility activities, they shall promptly document and report the same, not later than fifteen (15) calendar days from knowledge, to the head of the department/agency/unit and the nodal person for tobacco control (Department of Health) of respective state and/or union government. Upon receipt of such report, nodal person for tobacco control at state or union government level shall:
  - 21.1. release a statement on how the tobacco industry utilises the so called socially responsible activities to distance its image from the lethal nature of the product and to interfere with the setting and implementation of public health policies, and make the statement available to public;
  - 21.2. issue a letter to the particular office that received, is about to receive, or is approached by the tobacco industry for the so-called socially responsible activities, reminding them the true purpose and scope of such activities, and enjoin the concerned public office to take appropriate actions; and
  - 21.3. in case of violations of laws in relation to advertising, promotion, sponsorship by tobacco industry or the conduct of public official/employee, notify appropriate agencies for purpose of possible commencement of appropriate actions against the party responsible thereof.
22. Officials/employee shall not accept any political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.

23. In case any perception or impression of a real or potential partnership or cooperation with the tobacco industry, or support for the participation in the tobacco industry's so-called socially responsible activities is created, officials/employees concerned shall remove such perception. Such officials/employees, in coordination with Department of Health wherever appropriate, shall as a minimum, denounce the perceived partnership, cooperation, support, or participation, through an official report to be disseminated to the public and media, including the same media through which such conduct was conveyed.
24. Officials/employee should not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.

#### ***Preferential treatment to tobacco industry***

25. Officials/employees should not grant, directly or indirectly, any incentives, privileges or benefits to the tobacco industry to establish or run their businesses.

#### ***Enforcement and monitoring***

26. All reports on any interactions with tobacco industry, so-called corporate social responsibility activities, partnerships, contributions, preferential treatment etc., required under this code of conduct shall be submitted not later than fifteen (15) calendar days from its first occurrence or attempted occurrence to the nodal person on tobacco control (Department of Health) of respective state and/or union government.
27. Where appropriate, such report, shall specify (i) the nature, source, other details, and value (if applicable) of interactions, partnerships, contributions, so-called corporate social responsibility activities, preferential treatments or any such attempted phenomena, and (ii) the appropriate actions taken thereon.
28. The head of each agency/department/office/unit shall review his/her respective office's compliance with this code of conduct and report it to the nodal officer for tobacco control (Department of Health) of respective state and/or union government every six months. Such report shall be made available to public.
29. Apart from these general reporting guidelines, any specific reporting requirements as specified in various sections of the code of conduct remains applicable in those specific situations.
30. Compliance with this code of conduct shall form the part of the performance evaluation/appraisal of each employee/official and agency/department/office/unit.
31. The head of each agency/department/office/unit should ensure mechanisms for reporting by anyone of any violations of this code of conduct, and shall ensure adequate protection of such whistleblowers.